THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No. 26726 of 1998
Date:24-07-2007

Between:
A.Srihari

Petitioner

And

The Deputy General Manager,
Canara Bank, Circle Office, Hyderabad.

Respondent

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.26726 of 1998

ORDER:

1. The writ petitioner herein was working as a Sub-staff with the respondent-nationalized bank. He had been subjected to disciplinary proceedings on 28-12-1995 for the following charges:

"CHARGE-I

You have been working as a Peon at our Tallapalem branch since 11-10-1995. Earlier you have worked as a Peon at Angalur branch from 9.3.79 to 31.12.91 and also from 23.4.93 to 10-10-95.

Sri K.Venkata Rama Raju had availed AL DIR 48/87 for Rs.2600/- at our Angalur branch. He met the branch Manager during November,1994 and requested time upto 25.11.1994 to clear the loan. While he was coming out of the branch, you informed Sri Rama Raju that if he gives Rs.300/- to you, you would ensure that the loan would be written off. Afterwards when Sri Rama Raju met you at Gudlavalleru village you have repeated the same to him. When Sri Rama Raju expressed his inability to pay the same, you have agreed to accept Rs.200/- initially and informed that remaining amount of Rs.100/- has to be given at a later date. Then Sri Rama Raju paid Rs.200/- and demanded a receipt from you. You informed that it was not necessary. On the next day you have informed that his loan was written off and as a confirmation you rounded off the loan account number in his SB a/c pass book. Subsequently the branch Manager visited the village and demanded Sri K.Venkata Rama Raju to clear the loan. Then only Sri Rama Raju came to know that the loan is outstanding and you have deceived him.

Sri R.Subba Rao availed IRDP DPN BE 10/87 of Rs.7000/- at our Anagalur branch. He did not clear the loan. During August,94 you approached the borrower and informed that you would arrange for writing off the loan, provided he spends some amount. Thereafter the borrower believing your assurances paid an amount of Rs.500/- to you. You have informed him that the said amount was not sufficient and demanded some more money saying that the same has to be given to another person in the Bank. Hence the borrower paid Rs.150/- to you on the next day. Thereafter, you have informed the borrower that there was no need to enquire regarding his loan in the Bank and you would ensure that the loan would be written off. Further you have told him that receipt was not necessary. Subsequently the borrower came to know from the Manager of the branch that the subject loan was not written of.

Thus with ulterior motive, you have induced the subject borrowers to pay the above amounts by assuring them that you would ensure closure of their loans by way of write off and received the amounts from them. Thus you have misutilized your official position for deriving pecuniary benefit.

By your above actions you have lowered the image and reputation of the Bank in the eyes of public.

By your above actions, you have committed a gross misconduct within the meaning of Chapter XI Regulation 3, clause (f) of the Canara Bank Service Code.

Your actions being prejudicial to the interests of the Bank, you have committed a gross misconduct under Clause (m) , Regulation 3, Chapter XI of the Canara Bank Service Code.

CHARGE:II

You have been working as peon at our Tallapalem branch since 11-10-1995. Earlier you have worked as a peon at our Anagalur branch from 09-03-79 to 31.12.91 and also from 23.04.93 to 10-10-95.

Shri Ch.Nagabhshanam availed ALDL 30/88 for Rs.2500/- at our Angaluru branch. The borrower came to the branch during April,1995 to remit an amount of Rs.500/-. As the Manager was not available at the branch, and when he was about to return, you made enquiries with the borrower. The borrower informed that he brought Rs.500/- towards payment of his loan. At that time you have informed the borrower that as business hours were over and you would remit the amount on the next day provided the money was

given to you. Believing your words, the borrower gave the amount to you. After five to six days, the borrower again came to the branch to close the loan account in full and gave Rs.500/- to the branch manager.

At that time, the branch Manager enquired about outstanding liability in the loan account. Then the borrower informed the Manager about handing over of Rs.500/- to you for crediting the same to his loan account. As you were not available, the Manager asked the borrower to come on the next day. When the borrower came on the next date, in his presence, the Manager made enquiries with you. You have informed the Manager that you have utilized the said amount for your personal needs and assured that you would pay the amount. After two or three days you have paid the amount of Rs.500/-.

Thus , you have failed to account for the said amount immediately in the books of the Bank. You have temporarily misappropriated the amount of Rs.500/- tendered by the borrower for your needs and paid the money after the branch manager made enquiries with you.

Your above actions being prejudicial to the interests of the Bank, you have committed a gross misconduct under Clause (m) Regulation 3, Chapter XI of the Canara Bank Service Cod.

CHARGE-III:

You have been working as a peon at our Tallapalem branch since 11-10-95. Earlier, you have worked as a peon at our Angaluru branch from 09-03-79 to 31-12-91 and also from 23.04-93 to 10-10-95.

While so working at our Angaluru branch, your creditors visited our Angaluru branch demanding you to clear the monies borrowed/amounts due by you. The following are some of them.

Sri G.Nancharaiah, resident of Angaluru, is a customer/borrower of ourAngaluru branch. On 9-11-1994 you approached SriNancharaiah in the presence of Sr P.Janardhana Rao and stated that you were setting up a Dairy Farm with Bank finance and wanted to purchase his animal. It was agreed to sell the animal to you for Rs.6500/- and the amount would be paid in two monthly instalments in December,94 and January,95. As you have not paid the amount Shri Nanchariah and Sri P.J.Rao demanded the payment. Upon which, you have retorted by informing them that you were a Bank Officer with a monthly income of Rs.5000/-. Thereafter when you failed to pay the amount, the matter was brought to the knowledge of the branch Manager and sought his assistance.

Smt.P.Ramalakshmi, resident of Aangaluru availed a dairy loan on 23-9-94 from our Angaluru branch. Subsequently, you approached her and requested her to sell the dairy animals to you. It was agreed to sell the animal for Rs.6000/-. Then you took the dairy animal and assured her that you would pay the amount shortly. She made several demands on you to pay the amount, but in vain. Afterwards she apprised the same to the branch Manager. The Manager advised you to settle the matter immediately. Thereafter, the borrower along with her brothers approached you at Pamarru village and insisted settlement of the matter. Only at that time, you have returned the animal to her.

You have approached Sri M.Venkateswara Rao of Gudivada for a loan of Rs.20000/- by representing yourself , as Manager of Angaluru branch. Basing on your representation, an amount of Rs.20000/- was lent for which you have executed a pronote on 12-12-93 in his favour. Since you have failed to clear the amount, he met the branch manager of Angaluru and apprised the matter. Then the branch manager advised you to settle the matter.

You have represented yourself as Cashier of Angaluru branch to one Sri

G.Sriramulu of Gudivada and purchased provisions from his shop on credit basis on several occasions. You have paid Rs.200/- out of Rs.963/- due. When you failed to clear the balance amount, he approached the branch manager and requested his assistance. Then the branch manager advised you to repay the amount. During the discussions, you have shouted at Sri G.Sriramlu and threatened him that you would book a nuisance case with the Police against him.

You represented that you are working as a Clerk at Angaluru branch and borrowed an amount of Rs.25000/- from Sri A.Vidyasagar and executed a pronote on 7-7-91. Since you have failed to clear the amount, a suit was filed by Sri Vidyasagar for recovery of amount. A criminal case was also field against you in this regard.

You have taken clothes valued at Rs.1913/- on credit basis from M/s. Co Optex Hyderabad during June,1992 . In this connection, a Representative of the Manager, Co Optex, approached the branch manager of Angaluru during summer season of this year and informed him that amount was due from you and sought his assistance for recovery. Then the Manager advised you to settle the matter.

Thus you have resorted to outside borrowings by misrepresenting your official position.

Further branch manager and some staff members of Angaluru branch informed you that frequent visits/shoutings by your creditors was causing nuisance/inconvenience to the branch and advised you to settle the matters outside the branch premises.

By your above actions you have lowered the image and reputation of the Bank in the eyes of public.

Your above actions being prejudicial to the interests of the Bank, you have committed a gross misconduct coming within the meaning of Clause (m) Regulation 3, Chapter XI of Canara Bank Service Code."

2. Based upon the finding recorded by the Enquiry Officer holding the writ petitioner guilty of such charges, the Disciplinary Authority namely the Deputy General Manager of the Bank has passed orders on 07-02-1997 imposing the punishment of dismissal from service.

3. The appeal preferred against the said order of punishment was also decided against the writ petitioner by the General Manager and appellate authority on 18th October,1997. It will also relevant at this stage to point out that the writ petitioner has been prosecuted in C.C.No.31 of 1994 on the file of the Additional Judicial First Class Magistrate, Gudiwada, for certain offences allegedly committed by him. Based upon the conviction handed down to him, the Deputy General Manager had also passed another order on 7th February,1997 imposing the punishment of dismissal from service for the conduct which led to his conviction by a competent criminal court. In the present writ petition these orders have been put in issue.

4. One of the primary contentions canvassed by the writ petitioner is that he could not have been dismissed from service twice on the same day. It was elaborated that the relationship of master and servant between the writ petitioner and the respondent bank was brought to an end by imposition of punishment of dismissal. Once the punishment of dismissal is imposed, relationship comes to an end leaving nothing to subsist in between the petitioner as an employee on the one hand and the respondent bank as an employer on the other. When once there was no such

relationship subsisting the question of subjecting him to disciplinary control all over again does not arise. Therefore, if the order bearing No.HDAC:1015:E.37: 97 is passed earlier in point of time, to the order bearing No.HDAC:1020: E. 37:97 dated 7th February,1997, the latter order becomes illegal, for, the Deputy General Manager could not have exercised the disciplinary control over a person who is no longer in service of the bank. Therefore, both the orders could not have been passed simultaneously or at the same time. However, even if I were to accept such a contention, one of the two orders of dismissal passed against the writ petitioner will survive for further scrutiny. The learned counsel for the writ petitioner would urge that sofar as the conviction handed down to the petitioner by the competent Criminal Court is concerned, the same was set-aside subsequently and the conviction and sentence passed by the Criminal Court against him is no longer subsisting or available, for the bank to initiate any action against him in terms of Section 10 (1)(b)(i) of the Banking Regulations Act-1949.

5. Similarly with regard to the order of dismissal passed for the proven misconduct, the learned counsel for the writ petitioner would urge that the punishment against the writ petitioner was too harsh and too disproportionate a punishment to the proven misconduct. When the attention of the learned counsel has been drawn to the provisions contained in Section 11-A of the Industrial Disputes Act 1947 (for short 'the I.D. Act'), which came to be so introduced conferring powers upon the Labour Court or the Industrial Tribunal to set-aside such an order of dismissal and direct the reinstatement of the workman on such terms and conditions, including the Award of any lesser punishment in lieu of such dismissal, the learned counsel had preferred to avail the remedy available to workman by approaching the Labour Court/Industrial Tribunal in terms of Section 2-A(2) of the I.D.Act. It is for the Labour Court / Industrial Tribunal to consider the totality of the circumstances and exercise the power available with it under Section 11-A of the I.D. Act. I therefore, accede to the request made on behalf of the writ petitioner by the learned counsel that the petitioner should be permitted to avail the efficacious remedy available to him by approaching the Labour Court/Industrial Tribunal under Section 2-A(2) of the I.D.Act by appropriately raising a dispute. Without expressing any opinion on the merits of the matter, I grant liberty to the writ petitioner to avail the remedy available to him under provisions of the I.D.Act.

6. The writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

24-07-2007
Note:
The Registry is directed to return the
original set of impugned orders to the
learned counsel for the petitioner.

B/o.
Stp